

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

DAVID COVINGTON TRUDEAUX,
Movant,

V.

UNITED STATES OF AMERICA
Respondent.

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A-11-CA-448-LY
(A-09-CR-084-LY)

ORDER

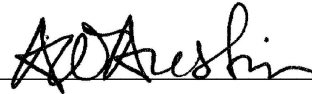
Before the Court is the Emergency Motion Pursuant to Fifth Circuit Court Rule 23 for Release on Recognizance or Surety Pending Decision [on] Movant's Motion for Habeas Corpus § 2255 Relief to Vacate, Set aside or Correct Sentence (Clerk's Doc. No. 123).

Movant requests that the Court release him on recognizance or surety pending the Court's decision on his § 2255 motion, which he filed on May 27, 2011 (Clerk's Doc. No. 105). The Court has set a hearing on one issue raised in that motion for December 6, 2011. Trudeau bases his request for release on Rule 23 of the Federal Rules of Appellate Procedure and 18 U.S.C. § 3143(b)(1).

The law Movant cites in his Emergency Motion is inapplicable. Rule 23 of the Federal Rules of Appellate Procedure governs detention and release in cases where decisions in habeas corpus proceedings are under review. Since no decision has yet been made and no review has commenced, Rule 23 is inapplicable. Furthermore, 18 U.S.C. § 3143(b)(1) governs the release or detention of "a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari." 18 U.S.C. § 3143(b)(1) (emphasis added). In the present case, Trudeau has filed a post-conviction § 2255 motion, as all of his rights to file a direct appeal have terminated at this time. Thus, 18 U.S.C. § 3143(b)(1) also does not apply.

Upon careful review of the Motion, the Court concludes the Movant has failed to show that he is entitled to immediate release pending his Motion to Vacate, Set Aside or Correct Sentence. Accordingly, the Emergency Motion Pursuant to Fifth Circuit Court Rule 23 for Release on Recognizance or Surety Pending Decision [on] Movant's Motion for Habeas Corpus § 2255 Relief to Vacate, Set Aside or Correct Sentence (Clerk's Doc. No. 123) is DENIED.

SIGNED this 26th day of September, 2011.

A handwritten signature in black ink, appearing to read "A. Austin", is written over a horizontal line.

ANDREW W. AUSTIN
UNITED STATES MAGISTRATE JUDGE